IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8598 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

DY. DIRECTOR OF HIGHER EDUCATION

Appearance:

MR HR PRAJAPATI for the Petitioner.

Mr. K.M.Parikh, ASSTT. GOVERNMENT PLEADER for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/08/2001

ORAL JUDGEMENT

This petition and Special Civil Application no. 8285 of 1989 were tagged together by an order dated 13.11.1995. Other petition being Special Civil Application no. 8285 of 1989 was listed before

this Court and it has been decided on 31st March, 2000 and this petition has remained undisposed of as it was not listed alongwith that petition.

2. By means of this petition, the petitioner has sought for a direction to the respondents to implement the orders dated 21st December, 1981 and 22nd March, 1990 and to pay to the petitioner difference in pay at par with J.M.Patel who was the petitioner of other petition. The petitioner joined as Junior Clerk in the Education Department on 5th March, 1959. After establishment of the State of Gujarat, the services of the petitioner were allocated to the State of Gujarat on 1.5.1960. The petitioner's pay scale was fixed at Rs.55-100 and thereafter he was promoted to the post of Sr. Clerk in the pay scale of Rs.200-340 with effect from 21st June, 1966. Thereafter, the petitioner was given promotion to the higher post and increments from time to time. One Mr. J.M.Patel who was the petitioner of Special Civil Application no. 8285 of 1989 joined the services of the Government after the petiioner i.e. on 5.11.1955. The junior to the petitioner was given higher pay scale compared to the petitioner on account of the provisions that were made by way of circular dated 5.1.1965. In view of that circular dated 5.1.65, some of the juniors were given higher pay scale compared to the senior employees. Therefore, some anomaly was created in the pay fixation of the junior and senior employees. In order to remove the anomaly of pay fixation, the Government issued a circular dated 8.5.70 which provides that in order to remove the anomaly created on account of the higher pay scale to a junior employee compared to the senior employees, the Government has decided that anomaly should be rectified by stepping up the pay of the senior persons affected to the level of the pay admissible to \ the junior Government servant on his promotion to the higher post irrespective of the fact that the senior Government servant has been confirmed in the higher post prior to the date of promotion to the junior person. A similar circular was issued on 16.11.1971 which provided that a government servant who happens to get less pay than what of the person junior to him may be getting, may be referred to the government for decision under Rule 51 of Bombay Civil Services Rules on the merit of the individual case. In case anomalies did not disappear, then that should be removed by adopting the principles of stepping up subject to fulfilment of certain conditions. The petitioner made a representation to the respondent authorities on 29th August, 1977. The Co-operation Department of the State of Gujarat followed the circulars dated 16.11.1971 and stepping up of the senior employees

in comparison and parith with the junior employees. The order dated 19.8.72 was passed by the Registrar, Co-operative Societies in order to remove the anomalies in the pay scale of senior employees with junior employees. The final seniority list was published by the respondent authorities on 1.5.1972 with effect from 1.1.1971 wherein the petitioner was shown at serial no. 130 and Mr. J.M.Patel was shown at serial no.159. The petitioner was shown as receiving the pay scale of Rs.200-310 though Mr. Patel was also receiving the pay scale of Rs.200-300. The pay scale applied to Mr. J.M.Patel was higher compared to that of the petitioner though he was senior to Mr. Patel. The petitioner made a representation dated 4.6.77 to the respondents bringing to their notice that the employees junior to the petitioner were being promoted and given a higher pay scale compared to the petitioner though the petitioner was senior as per seniority list published from time to time. In the seniority list of 1.5.72, the petitioner was shown at serial no. 130, while Mr. J.M.Patel was shown at serial no.159, but Mr. Patel was given a higher pay scale compared to the petitioner. The petitioner also made a representation to the Finance Department on the same line. In the seniority list of 1973, the petitioner was at serial no.416 and Mr. J.M.Patel was at serial no.440. In the year 1977, the petitioner was at serial no.485. While Mr. J.M.Patel was at serial no.515. The petitioner was informed by a letter dated 5th December, 1980 that his application dated 23rd October, 1980 is being considered and the matter is being taken up to remove anomaly in the pay scale of the petitioner. As a result of the proceedings, an order dated 21st December, 1981 was passed by the respondent no. 2. It was written in that letter that as per the seniority list published on 16.3.1981 which was the final seniority list, the petitioner was shown at serial no. 148, while the petitioner was much senior to Mr. Patel. He was receiving much lower pay in the time scale. The respondent no. 2 passed the order dated 21st December, 1981 stepping up the pay scale of the petitioner and directed that he should be given the pay scale in the parity with Mr. Patel, but that order was subject to the permission of the Audit Department. Though it was also mentioned that only thereafter the difference in the pay will be given effect from 1.4.1970. The Audit Department did not agree for stepping up of the petitioner and passed the order dated 21st January, 1981 stating therein that no further proceedings will be taken up with regard to stepping up of the pay of the petitioner in parity with Mr. Patel. The District Education Officer, Ahmedabad (Rural) also recommended the case of the

petitioner to the respondent no. 2 for the removal of anomalies in the pay scale of the petitioner and thereafter the petitioner also made several representations to resolve the anomalies in his pay scale. The representations of the petitioner were rejected by an order dated 21st January, 1991 by an order dated 31st August, 1995. The authority replied that Mr. Patel has been wrongly given the higher pay scale, hence no decision can be taken in the case of the petitioner. The respondents passed an order for recovering the amount of higher pay given to Mr. Patel by an order dated 17.11.89 and that order was challenged in this Court in the writ petition being Special Civil Application no. 8285 of 1989. This Court quashed the order dated 17.11.1989 and the respondents were directed to re-fix the pay of the petitioner on various posts held by him in the department by ignoring the impugned pay fixation order at Annexure "A" and by givig effect to the pay fixation shown at Annexure "A" and the order dated 14.9.1981 at Annexure "B". After passing necessary orders of fixation within a period of three months from the date of the order, the petitioner's terminal benefits including pension be necessarily revised and arrears be paid to him if they are due. As this Court has already directed the respondent authorities to re-fix the pay scale after considering various Government resolutions and circulars issued by the respondents, the case of the petitioner is also in respect of the re-fixation of the pay scale.

3. If the matter regarding Mr. J.M.Patel has not been disposed of by the authorities as per the direction of this Court pursuant to the order dated 31st March, 2000, the matter of the petitioner regarding re-fixation of the pay scale is required to be considered by the respondent authorities. In case the respondent authorities find that the petitioner is entitled for stepping up in the pay scale and the petitioner is also entitled for the amount on the basis of the stepping up of the pay scale to be given to the petitioner, the authority will pass approprite orders for entitlement of dues to the petitioner.

4. In view of the above discussion, this petition is being disposed of finally with a direction to the respondents to decide the case of the petitioner regarding re-fixation of pay scale on the basis of the Government resolution and circulars within a period of three months from the date or presentation of the copy of this judgment or receipt of writ from this Court and pass orders giving effect to pay fixation with arrears of

petitioner's terminal benefits including pension and revised pay scale and arrears should also be paid to him, if they are due to the petitioner. The petition stands disposed of finally. Rule is discharged with no order as to costs.

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